STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

1996.07.12

July 12, 1996

Joanie M. Dybach
700 Frnaklin Street, 2nd Floor
Napa, CA 94559

Re: **Meal Compensation in Health Care Industry**

Dear Ms. Dybach:

The Labor Commissioner, Roberta Mendonca, has asked me to respond to your letter of May 14, 1996, wherein you seek an opinion regarding the need to pay an individual employed as a respiratory therapist at a hospital facility for uninterrupted meal periods when the worker is not allowed to leave the hospital premises.

As you may know, in the case of *Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968, the Third District Court of Appeal upheld the DLSE's position that employees who are required to remain on the premises of the employer were under the direction and control of the employer and, thus, were entitled to compensation for that time period even if they were relieved of all duties during that period. The DLSE position was based on the definition of the term "hours worked" which is unique to the California Wage and Hour Orders.

In August of 1993, however, the IWC adopted new regulations for the "health care industry" and, as part of those new regulations, redefined the term "hours worked" for that "industry" so that the term was interpreted in accordance with the Fair Labor Standards Act. The operable words historically found in all of the other Wage Orders: "under the direction and control of the employer" were deleted. As you may know, the Fair Labor Standards Act has been interpreted to permit employers to require that the worker remain on the premises so long as the worker is relieved of all duties. (29 C.F.R. § 785.19(b) Accordingly, in the health care industry only, so long as the worker is relieved of all duties during the meal period the worker need not be paid even though not allowed to leave the employer's premises.

DLSE has always interpreted the meal period requirement of "not less than thirty minutes" as requiring an uninterrupted 30-minute meal period. The IWC did not chose to change any portion of the Orders which would impact on that enforcement policy.

The Division had adopted a policy in 1992 which, it had hoped, would cover the situation in its entirety. However, with the adoption of the revised "hours worked" language for the health care industry, the language has to be amended slightly to compensate for that change. The original opinion of the DLSE relevant to this inquiry appears below. This language continues to be the policy of the DLSE for all workers except those employed in the health care industry. The language which must be disregarded when dealing with the health care industry is in strikeout.

> If the employee is simply required to wear a pager or respond to an in-house pager during the meal period there is no presumption that the employee is under the direction or control of the employer so long as no other condition is put upon the employee's conduct during the meal period. ~~If, on the other hand, the employer requires the employee to not only wear the pager or listen for the in-house paging system, but also to remain within a certain distance of a telephone or otherwise limits the employee's activities, such control would require that all of the meal period time be compensated.~~
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> So long as the employee who is simply required to wear the pager is not called upon during the meal period to respond, there is no requirement that the meal period be paid for. On the other hand, if the employee responds, as required, to a pager call during the meal period, the whole of the meal period must be compensated.
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> Some questions have been raised regarding *de minimis* time required to respond to a particular question or request after response to the pager. The Division takes the position that if the employee is required to respond and is called upon to respond, the whole of the meal period becomes compensable. Since the IWC orders require that the employee have a duty-free meal period, any "duty" which interferes with the meal period (even if the "duty" required *de minimis* time) would require that the whole of the meal period be paid.

The above language continues to be the Division's policy in this regard.

I hope this adequately addresses the issues you raised in your letter of May 14th.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Roberta Mendonca, State Labor Commissioner
Nance Steffen, Assistant Labor Commissioner
Jose Millan, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner